IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

AR.No. 26 of 2007()

PETITIONER

MERLIN RUBINSTON, AGED 47 YEARS,
S/O. SELVADAS, PROPRIETOR,
M/S. JUDESON ENGINEERING SALES AND SERVICE
28/3453-A, ASHISHAM, CHILAVANOOR ROAD,
ELAMKULAM, COCHIN-20.

BY ADV. SRI.A.T.ANILKUMAR

RESPONDENTS:

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1. CHIEF GENERAL MANAGER,
KERALA TELE COMMUNICATIONS,
DOORASANCHARA BHAVAN, TRIVANDRUM.

2. THE CHIEF ENGINEER,
KERALA ZONE, BSNL, TRIVANDRUM.

3. SUPERINTENDING ENGINEER,
ELECTRICAL, BSNL, TRIVANDRUM.

4. THE EXECUTIVE ENGINEER,
TELECOM ELECTRICAL SECTION, BSNL,
TRIVANDRUM.

BY ADV. SRI.MATHEWS K.PHILIP,SC, BSNL

THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD ON 20/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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A.R. No.26 of 2007

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Dated: 20th September, 2007

ORDER

The Proprietor of M/s.Judeson Engineering Sales and Service, an authorised dealer of M/s.Greaves Cotton Ltd. was awarded with six works of "providing comprehensive maintenance of E/A sets for various T.E.buildings" under the BSNL - TESD-II, Trivandrum, TESD-Kottarakkara, TESD-Kollam and TESD- Alleppey, TESD-Trivandrum-I and TESD-Trivandrum III respectively. Annexure A are true photostat copies of the relevant pages of the agreement executed between the petitioner and the respondents and clause 25 therein is an arbitration clause. The petitioner claims that he has satisfactorily completed the work as per the specifications in the agreement. But the respondents, namely, the Chief General Manager, Kerala Telecommunications, Trivandrum (R1), the Chief Engineer, Kerala Zone, BSNL, Trivandrum (R2), the Superintending Engineer, Electrical, BSNL, Trivandrum (R3) and the Executive Engineer, Telecom Electrical Division, BSNL, Trivandrum (R4) have delayed disbursement of the remuneration due to the petitioner in a arbitrary manner and in violation of the agreements executed between the petitioner and the respondents. The petitioner points out that as

requested by the respondents, he has extended the contract period by further four months on the same conditions. The petitioner stopped the work only after a letter in that regard was given by the respondents. The petitioner has already issued the amount for two bills for the same rate quoted by the petitioner after completion of the work. There is no case for the respondents that the petitioner has not completed the work as per the specifications in the agreement or that the work done by the petitioner is substandard. It is on account of the request of the respondents that the petitioner did the work for a further period of six months. The petitioner relies on Annexure B counter affidavit filed by the respondents before this court in W.P.C.No.7098 of 2005 initiated by the petitioner to contend that even according to the respondents, the petitioner's remedy is to invoke the provisions of the Arbitration Act. Annexure C is the copy of the judgment in that Writ Petition whereby this court relegated the petitioner to remedies under the Arbitration Act. Annexure D is copy of the request made by the petitioner invoking the arbitration clause. The petitioner points out that the contention raised through the reply notice Annexure E is only one of limitation. The above contention, according to the petitioner is unsustainable. On these averments, the

petitioner prays in this application under Section 11(5) of the Arbitration Act read with clause 2(1) and 2(2) of the Scheme of Appointment of Arbitrators by the Chief Justice of the High Court of Kerala that an independent and impartial arbitrator be appointed for settling the disputes between the petitioner and the respondents.

2. A counter affidavit has been filed by the respondents wherein the only serious contention seen raised is that the contention that the petitioner's claim to have the issue settled through arbitration is barred by limitation.

3. Heard both sides.

4. I am of the view that the question whether the arbitration proceedings are barred by limitation itself can be made an issue in the arbitration. Under these circumstances, the Arbitration Request will stand allowed. Sri.N.D.Joy, Advocate, Neelamkavil Bhavan, 28/3227, 1st Cross Cheruparambath Road, Kadavanthara, Ernakulam already empanelled by this court is appointed as Arbitrator for resolving the disputes between the petitioner and the respondents raised through Annexure D. It is open to the respondents to raise the contentions before the Arbitrator that the proceedings are barred by limitation also.

The Arbitrator will enter on reference and pass award at the earliest.

srd **PIUS C.KURIAKOSE, JUDGE**